IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3558 OF 2005
WITH
CIVIL APPLICATION NO.1397 OF 2006
WITH
CIVIL APPLICATION NO.1318 OF 2006

Dubey Vimal Education Society & anr. ..Petitioners.
Vs.
Dy. Director of Education & Ors. ..Respondents.
...
Ms. Anupama B. Shah for the Petitioners.
Mr. C.R. Sonawane, AGP for Respondent Nos.1 to 4.
...

CORAM: DR. D.Y. CHANDRACHUD, J.

23rd June, 2006.

P.C. :

1. In this Petition under Article 226 of the Constitution orders passed by the Education Inspector, the Deputy Director of Education and by the State Government withdrawing recognition of the secondary school conducted by the First Petitioner at Kandivali, had been called into question. These orders have been passed on the ground that the school did not have the requisite infrastructure and facilities.

2. During the pendency of this Petition, a learned Single Judge (S.A. Bobde, J.) by an order dated 16th June, 2005 appointed an advocate of this Court to act as Commissioner to investigate the conditions in and around the school. The Commissioner submitted his report on 30th June, 2005. On 8th August, 2005 the learned Single Judge upon perusing the report of the Commissioner observed that the report shows that the classes can be run in the school premises. The submission of the learned AGP was that there are irregularities particularly in the accounts maintained by the school. Counsel appearing for the Petitioners stated that these were of temporary nature and to be regularized in due course. In these circumstances, for the academic year 2005-06 the order withdrawing recognition of the school came to be stayed and the Petition was admitted for final hearing. The interim order of the Court dated 8th August, 2005, however, granted liberty to the Education Officer to apply for vacating or modifying the interim order depending upon the performance of the Petitioners.

3. A Civil Application was taken out by the Deputy Director of Education (C.A. 1397 of 2006) and it has been stated that after

the passing of the earlier order the Education Inspector (West Zone) visited the premises of the school and found that the school does not possess the requisite infrastructure. The material part of the averments in support of the aforesaid contention is as follows :

> "The Applicants state that after passing the said order, dated 08.08.2006, by this Hon'ble Court, the Education Inspector (West) Zone, had visited the said School of the Petitioners on 29.11.2005 and again on 20.02,2006 and he found and confirmed that the School premises are not proper and classes are run in a chawl type structure and two rooms each are occupied on two different chawl premises for running the school classes and two classrooms are run on a loft of the said chawl. The roof of the said chawl is covered with tin sheet and the said classrooms are also having insufficient and inconvenient area. Further, the students have to climb to the class rooms on the loft with the help of iron ladder, which is also inconvenient and may cause danger to the students of slipping from the iron ladder. The class rooms are having less than the standard area of 20 feet x 18 feet. In the present case, the class rooms are very small in area and there is only one toilet block in the laboratory. No urinals are provided, one toilet block in the computer room is being used by girl students. In fact, there should be sufficient and separate toilet blocks for the girls and boys students. There is also no playground and one small room is used as a library having one cupboard therein. There is no sitting arrangement for students as well as the teaching staff. The record of the School is also not properly maintained. The Education Inspector, therefore, came to the conclusion that there are deficiencies as regards the school premises and the atmosphere therein and that immediate action is required to be taken in view of the dereliction on the part of the Petitioners' school management, as the students at large

are being affected."

An application was made therein for vacating the interim order passed by this Court on 8th August, 2005. In support of the application, reliance has been placed on the report of the Education Inspector dated 2nd March, 2006. With the consent of all Counsel, the Petition is taken up for final hearing.

4. The grievance of the Petitioners is that the action that has been proposed is with a malafide intention and it has been urged that the school has the requisite infrastructure. Obviously the question as to whether the school does or does not have the infrastructure is primarily a matter for the departmental authorities to consider and in the very nature of things, it would not be possible for this Court to substitute its own decision for a decision taken by the authorities on a verification of the infrastructure including of the teaching and non-teaching facilities available. The existence of requisite infrastructure and of teaching and non-teaching facilities is of utmost importance to the welfare of students. At the same time, having regard to the nature of the grievance of the Petitioners it is necessary to ensure that an independent and objective verification is carried out by an officer of

the department of a sufficiently senior level. That should obviate the grievance of the Petitioners.

5. In that view of the matter, it would be appropriate if the Petitioners are furnished with an opportunity of responding to the report dated 2nd March, 2006 of the Education Inspector and if in the meantime, directions are issued for a fresh verification to be carried out by the Deputy Director of Education. Counsel appearing for the Petitioners states that the academic year has already commenced. The following directions would serve the ends of justice :

(i) The Petitioners shall on or before 12th July, 2006 submit their response to the report of the Education Inspector dated 2nd March, 2006, to the Deputy Director of Education clarifying whether the deficiencies that have been noted in the report have been duly rectified;

(ii) The Deputy Director of Education shall personally conduct an inspection of the school at 12 noon on 1st July, 2006 in the presence of the authorized representatives of the Petitioners.

In that event the tentative observations / findings of the Deputy Director of Education upon the inspection shall be made available to the Petitioners on or before 7th July, 2006 so as to enable the Petitioners to submit their response thereto on or before 14th July, 2006. The Deputy Director of Education shall convene a hearing on 15th July, 2006 at 11.00 a.m. upon which final reasoned orders shall be passed by the Deputy Director of Education in respect of the recognition of the school;

(iii) The orders which have been impugned in these proceedings withdrawing recognition shall not be implemented until the Deputy Director of Education arrives at a determination. The question of recognition shall accordingly abide by the final determination that would be made by the Deputy Director of Education. The Deputy Director of Education shall take a fresh and independent decision in the light of the inspection which is to be carried out;

(iv) In the event any decision adverse to the Petitioners is arrived at, the decision shall not be enforced for a period of two weeks from the date of communication.

6. Counsel appearing for the Petitioners undertakes to this Court on instructions that until the Deputy Director of Education arrives at a determination, no fresh admissions will be granted.

7. The Petition is disposed of accordingly. In view of the disposal of the main petition, the Civil Applications are rendered infructuous and are accordingly disposed of.